

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Jun 01, 2020**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NICHOLAS SEAN CARTER,

Defendant.

No. 4:19-CR-06063-SMJ-2

ORDER DENYING DEFENDANT'S  
MOTION TO REOPEN  
DETENTION HEARING

**ECF No. 95**

Before the Court is Defendant's Motion to Reopen the Detention Hearing to Consider Conditions of Release. ECF No. 95. The United States opposes the motion. ECF No. 102. On May 29, 2020, the Court reopened the detention hearing to consider Defendant's proffers and the arguments of counsel. 18 U.S.C. § 3142(f). Defendant appeared by video from the Benton County Jail represented by Nicholas Marchi. Assistant United States Attorney Stephanie Van Marter represented the United States.

Because Defendant previously waived his right to a detention hearing, ECF No. 33, the Court treats this as an initial detention hearing. The Court has

1 considered the parties' briefing, ECF Nos. 95, 102, the pretrial services reports,  
2 ECF Nos. 23, 86, 101, and the arguments and proffers of the parties, and has  
3 evaluated the four factors outlined in 18 U.S.C. § 3142(g) to decide whether there  
4 are conditions of release that would reasonably assure Defendant's appearance in  
5 court and the safety of the community: (1) the nature and circumstances of the  
6 offense; (2) the weight of evidence against Defendant; (3) the history and  
7 characteristics of Defendant; and (4) the nature and seriousness of the danger  
8 Defendant would present to the community if released. The Court has also taken  
9 into account the risks posed by COVID-19 to those in custody, as well as any  
10 particular risk factors associated with Defendant. Based on the nature of the  
11 charges, there is a presumption of detention in this case. On balance, the Court  
12 finds that these factors, as set forth orally by the Court, weigh in favor of  
13 Defendant's continued detention.

14 As an initial matter, the Court notes that Defendant has three pending federal  
15 cases, including the instant case. *See* Case Nos. 2:19-CR-00183-SMJ-1 (charging  
16 Defendant with possession with intent to distribute methamphetamine and with  
17 being a felon in possession of a firearm and ammunition), 2:20-CR-00005-SMJ-1  
18 (charging Defendant with possession with intent to distribute methamphetamine,  
19 heroin, and fentanyl, and with being a felon in possession of a firearm). In the  
20 instant case, Defendant is charged with possession with intent to distribute

1 methamphetamine, with being a felon in possession of a firearm and ammunition,  
2 and with possession of a firearm in furtherance of drug trafficking. Between the  
3 joint complaints and indictments and the United States' proffers, the following  
4 series of incidents is alleged. On June 4, 2019, law enforcement initiated a traffic  
5 stop of a vehicle driven by co-Defendant Monica Pesina, wherein Defendant was a  
6 passenger. Upon a positive indication from a K-9 unit, both individuals were  
7 ordered out of the vehicle; a bag of methamphetamine was seen sticking out of  
8 Defendant's pocket, Defendant admitted he had a firearm, and a loaded firearm  
9 was located on his person. Defendant was arrested and later released. A  
10 subsequent search of the vehicle revealed nearly \$27,000, methamphetamine,  
11 heroin, indicia of drug trafficking, and items of dominion for co-Defendant Pesina.  
12 Around the same time, a separate investigation identified Defendant and co-  
13 Defendant Pesina as methamphetamine distributors associated with residences in  
14 Spokane and Richland. Law enforcement conducted two controlled buys of  
15 methamphetamine from Defendant and co-Defendant Pesina and search warrants  
16 were issued and executed at the residences. The searches revealed  
17 methamphetamine, heroin, suspected fentanyl-laced pills, marijuana, multiple  
18 firearms, cell phones, and items of dominion for Defendant and co-Defendant  
19 Pesina. Both Defendant and co-Defendant Pesina were arrested on September 27,  
20 2019 and later released. On October 5, 2019, law enforcement responded to a 911

1 call from an individual reporting that several individuals had circled their vehicle  
2 and threatened them with various weapons, to include a firearm, a bat, and a knife.  
3 Law enforcement located Defendant in close proximity to the incident, whereupon  
4 Defendant fled, discarding items later determined to be a firearm and narcotics.  
5 Defendant was arrested and later released. Finally, in November 2019, law  
6 enforcement received information from a confidential source that Defendant and  
7 co-Defendant Pesina were distributing narcotics from a residence in Dixie,  
8 Washington.<sup>1</sup> Law enforcement responded to the address and located and arrested  
9 Defendant, who had narcotics on his person, outside the residence, and located and  
10 arrested Co-Defendant Pesina inside the residence. A search of the residence  
11 revealed two firearms, ammunition, \$3,850, items of dominion for Defendant and  
12 co-Defendant Pesina, methamphetamine, cocaine, heroin, suspected fentanyl-laced  
13 pills, and indicia of drug trafficking.

14 The allegations against Defendant are serious and the combination of  
15 firearms and narcotics, particularly fentanyl, is indicative of danger to the  
16 community if Defendant were to be released. Most concerning to the Court is that  
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18 <sup>1</sup> It was proffered that Defendant and co-Defendant relocated to the Dixie residence  
19 in an effort to evade law enforcement after they became aware that warrants had  
20 been issued for their arrests.

1 Defendant's alleged criminal activity persisted through four separate law  
2 enforcement interventions, suggesting Defendant was not deterred by his arrests,  
3 the arrests of his co-Defendant, the incursion of criminal charges, or the seizure of  
4 evidence. Moreover, at each incident, Defendant is alleged to have possessed a  
5 firearm(s), which he is prohibited from possessing due to prior felony convictions,  
6 despite having had firearms seized from him shortly beforehand. These allegations  
7 exacerbate the Court's concern for the safety of the community as they suggest  
8 Defendant has both the ability to access firearms quickly and a disregard for the  
9 legal restriction from doing so due to his prohibited status. The risk of  
10 nonappearance is heightened in this case due to the lengthy terms of imprisonment  
11 that would necessarily result if Defendant were to be convicted of the offenses.

12 The weight of the evidence is the least important factor and Defendant is  
13 entitled to a presumption of innocence. Based on the United States' proffers and  
14 the allegations set forth in the affidavits supporting the complaints, the case has  
15 sufficient weight to give the Court concern as to risk of dangerousness and risk of  
16 nonappearance.

17 Turning to his history and characteristics, Defendant is 39 years old, was  
18 born in Lewiston, Idaho, and has generally resided between Lewiston and  
19 Spokane, Washington. He has ties to this District; his mother, with whom he has a  
20 close relationship, resides in Spokane with one of his children; he has three other

1 children who reside with their respective mothers (one in Clarkston, Washington  
2 and two in Spokane), and he has a sister who resides in Lewiston. Defendant's  
3 girlfriend of six months is co-Defendant Monica Pesina. Prior to his arrest,  
4 Defendant resided in a rental home in Spokane with two of his children.  
5 Defendant has limited documented employment history as a truck driver. He  
6 reported that he has a history of methamphetamine use.

7 Defendant's criminal history is extensive, dating back to when he was 14  
8 years old, and includes offenses involving violence, weapons, controlled  
9 substances, and negative interactions with law enforcement. As a minor, he was  
10 convicted, most notably, of second degree assault (1996), theft (1997) during  
11 which it was alleged that Defendant produced a knife, and intimidating a witness  
12 (1997); he also had a dismissed charge for unlawful possession of a firearm (1997).  
13 As an adult, he has convictions for attempted second degree assault (2001), during  
14 which it was alleged the he possessed a shotgun, burglary (2005), reckless driving  
15 related to a high speed vehicular chase after which Defendant attempted to hide  
16 (pled down from an eluding charge - 2006), attempt to elude police related to a  
17 vehicular chase lasting 45 minutes and a subsequent foot chase (2009), and felon in  
18 possession of a firearm (loaded and stolen) and ammunition (2010). The repeated  
19 charges and convictions involving various weapons, in light of the instant  
20 allegations relating to firearms, contribute to the Court's finding that Defendant

1 poses a risk of danger to the community. Moreover, Defendant has failed to  
2 appear upwards of ten times for hearings, including for a sentencing hearing; this  
3 exacerbates the Court's concern as to his risk of nonappearance on the current  
4 federal matters.

5 The Court appreciates that Defendant has formed a release plan<sup>2</sup> and does  
6 not take lightly his concerns regarding COVID-19.<sup>3</sup> However, the Court's  
7 concerns regarding the safety of the community and Defendant's risk of  
8 nonappearance are not sufficiently mitigated by his release plan. On balance,  
9 based on the instant allegations of controlled substances and firearms and  
10 Defendant's criminal history, which includes weapons-related offenses and  
11 noncompliance with law enforcement, the Court finds that Defendant has failed to

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12  
13 <sup>2</sup> Defendant proposes residing with the mother of a friend and ex-girlfriend in  
14 Spokane, Washington.

15 <sup>3</sup> Defendant did not proffer any underlying health condition rendering him  
16 particularly susceptible to complications if he were to contract COVID-19. The  
17 Court instructed defense counsel to inform the Court, the United States Marshal's  
18 Service, or the jail if Defendant does have such an underlying condition, as the jail  
19 has successfully been able to accommodate at-risk individuals with more isolated  
20 cells.

1 rebut the presumption of detention, that no combination of conditions can  
2 adequately address its concerns, and that his continued detention is warranted.

3 **IT IS HEREBY ORDERED:**

4 1. The Motion to Reopen Detention Hearing (**ECF No. 95**) is **DENIED**.  
5 Defendant shall remain held in detention pending disposition of this case or until  
6 further order of the Court.

7 2. If a party seeks review of this Order by another court pursuant to 18  
8 U.S.C. § 3145(b), counsel shall adhere to the Detention Order Review Protocol  
9 found in LCrR 46(k).

10 DATED June 1, 2020.

11 s/Mary K. Dimke  
12 MARY K. DIMKE  
13 UNITED STATES MAGISTRATE JUDGE  
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